

Adelaide IT businessman fined for underpaying staff more than \$300,000

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The operator of a now liquidated IT software company has been fined by the Federal Circuit Court for underpaying five former staff \$314,595.

Federal Circuit Court Judge Denys Simpson, described James Robert Manning as 'recklessly indifferent to his statutory obligations' and fined him \$52,800, ordering that the penalty be paid to the former employees within 60 days.

Manning admitted numerous breaches of workplace law including failing to pay minimum wages; annual leave entitlements on termination; severance payment on termination; and superannuation contributions between 2010 and 2011.

Manning also failed to comply with a Notice to Produce from the Fair Work Ombudsman, which required him to produce certain documentation for investigation.

Judge Simpson found that the contraventions of workplace law represented a 'substantial failure by Manning to comply with fundamental obligations on employers.'

Manning was the sole director, secretary and beneficial owner of Compliance & Competency Management Pty Ltd, a computer training software company, which went into liquidation before the court proceedings commenced, preventing action against the company.

Manning admitted failing to pay the workers for up to four months, despite the employees raising issues about wages with him several times. In one case an employee asked Manning before Christmas 2010 for at least \$2,000 to have some money for his family for Christmas. Manning failed to reply or make any payment.

Judge Simpson said: "Mr Manning could have minimised the losses incurred by the employees had he acted in a more reasonable and candid manner....particularly in regard to his communication with the employees about its (the businesses) financial viability"

Judge Simpson also noted that Manning has more than 20 years' experience managing and operating businesses and has held directorships in 27 different companies. Judge Simpson said there was no evidence that Manning had previously contravened workplace laws.

The Fair Work Ombudsman discovered the alleged underpayments when it investigated complaints lodged by the employees.

Judge Simpson noted that because the company is in liquidation the penalty will return only about 17 cents in the dollar to what is owed to the employees.

Fair Work Ombudsman, Natalie James, said the case would send a strong message that liquidating a company could not be a means to avoid penalty for contravening workplace law.

"The underpayments in this case were extreme and the employer's lack of cooperation with Inspectors, or to respond to formal demands to produce documentation, were key factors in the decision to take this case to court," Ms James said.

"The majority of the Fair Work Ombudsman's interactions with employers are co-operative, and identified underpayments are rectified voluntarily. Where that doesn't occur, we won't hesitate to take action to ensure as much money as possible is returned to workers who have clearly been exploited."

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